

use. See, *e.g.*, the Consumers Legal Remedies Act (CC §§1750–1784)), which allows recovery of damages and restitution of property (CC §1780(a)), but does not explicitly permit the consumer to avoid paying for goods or services purchased in violation of the Act. Some judges would not permit the violation of this Act to be used defensively, while others would allow such use under general principles of liberal construction of consumer laws. See, *e.g.*, CC §§1760 (the Consumers Legal Remedies Law shall be liberally construed) and 1780(a)(5) (court may award any other relief it deems proper).

### III. CREDIT TRANSACTIONS

#### A. Retail Installment Sales Under Unruh Act (CC §§1801–1812.20)

##### 1. [§5.3] Transactions Covered

The Unruh Act (CC §§1801–1812.20) is intended to apply to retail sales of goods or services for a deferred payment price payable in installments. CC §1802.5. All retail installment sales made under a “contract” (CC §1802.6) or an account (CC §1802.7; *Fox v Federated Dep’t Stores, Inc.* (1979) 94 CA3d 867, 878, 156 CR 893) in California are covered. CC §1802.19. See also 3 Witkin, Summary of California Law, *Sales* §§252–278 (9th ed 1987). The Act should be given a liberal construction to protect consumers. *King v Central Bank* (1977) 18 C3d 840, 135 CR 771.

##### 2. [§5.4] Excluded Transactions

The Act applies only to sales made to a consumer for use primarily for personal, family, or household purposes. CC §§1802.1, 1802.2. This is determined by the intent of the parties at the time the contract was entered into. See *Cessna Fin. Corp. v Pivo* (1976) 58 CA3d 281, 129 CR 888.

Sales under which a consumer is extended credit for a 30-day period subject to an agreement to pay the full price when billed are not subject to the Act. See *Seibert v Sears Roebuck & Co.* (1975) 45 CA3d 1, 9, 120 CR 233.

The provisions of the Act do not apply to any contract providing for (a) the construction and/or sale of an *entire* residence or mobilehome, or all or part of a structure designed for commercial or industrial occupancy, whether or not a parcel of real property is included; (b) the sale of a lot or parcel of real property; (c) the sale of certain aircraft; or (d) the sale of certain vessels when the cash price exceeds \$25,000. CC §1801.4.

Premium finance agreements entered into by an industrial loan company under Fin C §§18560–18642 are not covered by the Act. CC §1801.7.

Loans by “supervised financial organizations” for the purpose of buying goods and services are not covered by the Act unless the seller and lender are related by common ownership or control and the relationship was a material factor in the loan transaction, or they share in the profits or losses of either or both the sale and the loan. CC §1801.6.

### **3. [§5.5] Contract and Account Requirements**

All contracts subject to the Act must be in writing and dated, and the printed portion must be in at least eight-point type. CC §1803.1.

The contract must be contained in a single document and must include the following:

- The entire agreement concerning the cost and the terms of payment. CC §1803.2(a).
- Identification in bold type of the nature of the contract, *i.e.*, whether it is a retail installment contract or a security agreement, and notice to the buyer in bold type of the consequences of granting a security interest in the event of default in any contract that provides for such a security interest. CC §1803.2(b).
- Notice to the buyer in bold type (1) not to sign the agreement before reading it or, if it contains any blank spaces to be filled in, that the buyer is entitled to a completely filled in copy of the agreement; (2) of the right to prepay the full amount due and receive a partial refund of the finance charge; (3) of the method to be used to figure the amount of the refund; and (4) of the right to be furnished on request the amount of the refund. CC §1803.2(c)–(e).
- Identification of the buyer and seller, their addresses, and a description of the goods or services. CC §1803.3(a).
- A complete disclosure of the information required to be disclosed by Regulation Z, the cash price, taxes, downpayment, insurance (see also CC §1803.5) and official fees, administrative finance charge, finance charge, deferred payment price, any balloon payments, and the method to be used to compute the unearned finance charges if prepayment in full is made. CC §1803.3(b)–(g).
- Notice of the buyer’s absolute right to a new payment schedule on default of any balloon payment. CC §1807.3(a).

All sellers under retail installment accounts must provide the buyer with the following:

- Full disclosures as to finance charges, payment requirements, and the conditions under which the seller may retain or acquire a security interest, in a single written statement before the first transaction on the account is made. CC §1801.1.
- Periodic statements, which must be mailed or delivered at least 14 days before the end of the period within which payment must be made, providing detailed information about account transactions during the period, finance charges, and the amount due. CC §1810.3(a)–(c).
- Notice of any change to be made in the terms of the account. CC §1810.3(d).
- Notice of the buyer's right to a refund when a credit balance exists in the account. CC §1810.3(e)–(f).
- Any agreement on the cost of insurance and who is to procure it. CC §1810.5.
- An annual statement of service charges charged or paid during the preceding year furnished no later than March 1 of each year. CC §1801.11.

Under CC §1810, a retail installment account agreement is deemed to have been accepted by the buyer if

- The buyer had signed the agreement which included signing an application containing the terms of the agreement, or
- The account is used by the buyer, or by someone authorized by the buyer, and the buyer has been given written notification that the use of the credit card means that the agreement has been accepted by the buyer.

The agreement becomes effective once the buyer has been given the disclosure required under CC §1810.1 and has accepted the agreement as provided above. CC §1810.

Any application form or preapproved written solicitation for a credit card issued in connection with a retail installment account must, with specified exceptions, contain either (1) disclosure of the periodic rate, any annual fee, and any “free-ride period,” or (2) a disclosure that satisfies the initial disclosure statement requirements of Regulation Z. CC §1810.21. Similar disclosure requirements for open-end credit cards and charge cards are set forth, respectively, in CC §§1748.11 and 1748.22. See §5.16.

Any information required to be disclosed by the Act in a retail installment contract or other document may be disclosed in any manner, method,

or terminology required or permitted under Regulation Z (12 CFR §226.6), except that permitted by §226.18(c)(2) of Regulation Z. CC §1801.5.

#### **4. [§5.6] Prohibited Acts and Terms**

The following provisions may not be included in any contract covered under the Act:

- A waiver of the provisions of the Act. CC §1801.
- An agreement by the buyer not to assert claims or defenses arising out of sale against either the seller or the seller's assignee. CC §1804.1(a). However, the buyer may waive the statute of limitations. *Mysel v Gross* (1977) 70 CA3d Supp 10, 17, 138 CR 873.
- An acceleration of maturity of the debt absent default by the buyer. CC §1804.1(b).
- A power of attorney to confess judgment or an unlawful assignment of wages. CC §1804.1(c).
- Authority to enter the buyer's premises unlawfully in repossessing the goods. CC §1804.1(d).
- A waiver of the right to sue for illegal acts done in collection or repossession. CC §1804.1(e).
- A power of attorney appointing the seller or holder of the contract as the buyer's agent for collection or repossession. CC §1804.1(f).
- Relief of the seller from liability for any legal remedies the buyer may have against the seller. CC §1804.1(g).
- An agreement by the buyer to any charge for the exercise of the buyer's right to rescind or avoid the contract. CC §1804.1(h).
- A grant to the seller or holder of a right to bring an action in an improper venue. CC §1804.1(i). See also §5.8.
- A grant to the seller of a security interest in the buyer's real property (other than a mechanic's lien) for a home improvement contract (see Bus & P C §7151.2) when the buyer is 65 years old or older. CC §1804.1(j).
- A finance charge determined in part by the precomputed basis and in part by the simple interest basis, except as permitted by CC §1805.8. CC §1805.9.
- A delinquency charge of not more than \$10.00 or \$15.00, depending on

the length of the default. CC §1803.6. This provision also applies to retail installment accounts under CC §1810.12.

- A finance charge exceeding that disclosed to the buyer as permitted under CC §1805.1 or CC §1810.2. See also CC §§1805.8–1805.9.
- A provision for a security interest in goods fully paid for or not sold by the seller, except in a contract for services. CC §1804.3(a).
- A provision in a contract for goods for a security interest in real property when the primary goods sold are not to be attached to the real property. CC §1804.3(b).
- An annual fee or charge. CC §1805.1.

In contracts entered into on or after January 1, 1983, the finance charge must be determined on the simple interest basis if the final installment under the original contract is due more than 62 months after the date of the contract. CC §1805.7.

Any provision in a contract that is prohibited by the Act is void but it does not invalidate the whole contract. CC §1804.4.

The seller may not legally perform any of the following acts:

- Obtain the buyer's signature to a contract that contains blank spaces to be filled in after it has been signed. CC §1803.4.
- Fail to deliver a legible copy of the contract and any other required documents to the buyer at the time of execution. CC §1803.7.
- Induce an agreement by offering consideration contingent on the happening of a future event. CC §1803.10.
- Solicit buyers in an advertisement to enter into a retail installment contract with the seller if the seller does not intend to sell that contract to a financing agency or other assignee without clearly stating the range of periodic rates that will be used to determine the finance charge imposed in the installment contract. CC §1803.11.
- Impose a delinquency charge for any default of payment on any purchase made before the written disclosure concerning the delinquency charge provided under CC §1810.3(d) has been given to the buyer. CC §1810.12.
- Assess any finance charge for goods purchased until the goods are in the buyer's possession, except as provided in CC §§1805.6(b)–(c), and 1810.10(b)–(c). CC §§1805.6(a), 1810.10(a).
- Require the buyer to obtain financing from a particular source. CC §1812.20.

### 5. [§5.7] Relief Available

The buyer need pay only the cash price (no other charges) until the seller delivers a copy of the contract and other documents (CC §1803.7), the memorandum required under CC §§1808.2–1808.3 for add-on sales (CC §1808.4), or the statement on finance charges for a retail installment account (CC §1810.1). The buyer need not pay any finance charge on a retail installment account if the seller fails to mail or deliver its periodic billing statement at least 14 days before the end of the period within which payment must be made to avoid additional finance charges. CC §1810.3(b).

In addition, the buyer has the following rights:

- Rescission if the buyer is unable to obtain third party financing, if the buyer notifies the seller within three business days. CC §1803.9.
- The right to pay the entire indebtedness before maturity without penalty, and with a refund of the unearned finance charges. CC §1806.3(a).
- The right to a new payment schedule on default of a balloon payment. CC §1807.3.
- Recovery of any finance, delinquency, collection, extension, deferral, or refinance charges paid and relief from any further charges if the seller fails to comply with any provision of the Act (CC §1812.7), unless the seller corrects nonwillful noncompliance within 30 days (CC §1812.8).
- The right to redeem repossessed goods. CC §1812.2.
- Protection against a deficiency judgment after repossession and resale. CC §1812.5.
- Treble damages for the willful imposition by the seller of illegal charges on add-on sales. CC §1812.9.
- Reasonable attorneys' fees and costs to the prevailing party in any action brought under the Act. CC §1811.1.

The relief available to the seller includes:

- The option on the buyer's default either to retake and resell the goods or sue for a judgment on the balance due. CC §1812.
- The right to correct nonwillful violations of the Act within 30 days. CC §1812.8.
- Reasonable attorneys' fees and costs if the seller is the prevailing party in any action brought under the Act. CC §1811.1.

## **6. [§5.8] Venue Requirement**

The proper court for all actions under the Act is the superior court in the county in which (a) the contract was signed by the buyer, (b) the buyer resided at the time the contract was entered, (c) the buyer resides at the commencement of the action, or (d) the goods have been affixed to real property. See CC §1812.10(a). The proper court location, within this superior court, for trial of the action is the location that is nearest or most accessible to where (a) the buyer signed the contract, (b) the buyer resided at the time the contract was entered, (c) the buyer resides at the commencement of the action, or (d) the goods have been affixed to real property. Otherwise, any location of the superior court is the proper location for the trial. CC §1812.10(b).

The plaintiff must file concurrently with the filing of the complaint an affidavit or verified complaint showing that the action has been commenced in the proper superior court and court location. If the plaintiff fails to do so, the court must, on its own motion or on the motion of any party, dismiss the action without prejudice; however, the court may, on such terms as may be just, allow the affidavit to be filed after the complaint was filed and have a copy of it served on the defendant. CC §1812.10. Some judges think this affidavit requirement is not applicable in small claims court because the plaintiff must, on the Judicial Council approved claim form, declare under penalty of perjury that the court is the proper court for hearing and check the box giving the appropriate reason why venue is proper.

## **B. Consumer Credit Contracts**

### **1. [§5.9] Statutory Coverage**

The consumer credit provisions of CC §§1799.90–1799.104 are intended to protect credit guarantors in any obligation to pay money on a deferred basis when the subject matter is primarily for personal, family, or household use, including the following:

- Retail installment contracts and accounts as defined in the Unruh Act (see §§5.3–5.4).
- Conditional sales contracts involving motor vehicles as defined in the Rees-Levering Motor Vehicle Sales and Finance Act (see §5.33).
- Lease contracts.
- Loans or extensions of credit not secured by real property.
- Loans or extensions of credit involving a real estate licensee (Bus & P C



§§10240–10248.3), industrial loan company (Fin C §§18000–18642), broker or finance lender (Fin C §§22000–22780), whether or not secured. See CC §1799.90.

These provisions (CC §§1799.90–1799.104) are not to be construed to make applicable, to affect, or to operate as a waiver of any of the provisions of CC §§2787–2855 (suretyship) or CC §§5100–5138 (husband and wife). The delivery of notice under CC §1799.91 is not evidence that the person who received the notice did or did not enter the transaction in the capacity of a surety. CC §1799.98(b).

## **2. [§5.10] Contract Requirements**

All covered contracts must conform to the following requirements:

- Whenever a creditor obtains the signature of more than one person on a consumer credit contract or lease (unless the persons are married to each other), a specified notice in English and Spanish advising of responsibility for the debt created by the contract must be given to each person who does not in fact receive any of the money, property, or services that are the subject matter of the contract before that person becomes obligated under the contract. CC §1799.91(a)–(d). When this notice is required to be given and the contract is written in a language other than English or Spanish, the creditor must give the notice in that language and English. CC §1799.91(b). The requirements of CC §1799.91(a)–(b) do not apply to a creditor offering or extending open-end credit, as defined in Regulation Z (see CC §1802.18), or to joint applicants if specified conditions are satisfied. CC §1799.91(c), (e). The placement of the required notice is governed by CC §1799.92. Federal notice requirements are set forth in CC §1799.96.
- The required notice must be signed by each person responsible for the debt after all the blank spaces in the contract have been filled in. CC §1799.93(a).
- A copy of the contract, the notice, and any other document affecting the obligation must be given to each “debtor.” CC §1799.93(b).
- No consumer credit contract shall provide for a security interest in any religious books, artifacts, or materials valued at less than \$500 unless they are specifically pledged as collateral. Any provision in a contract that violates this requirement is void and unenforceable. CC §1799.97. In addition, a security interest taken in household goods in connection with a consumer credit contract is void and unenforceable unless the



holder of the security interest takes possession of the household goods or the purchase price of the household goods was financed through the consumer credit contract. CC §1799.100.

However, the required notice must not be construed so as to alter or affect the rights and obligations created by the contract. CC §1799.94.

### **3. [§5.11] Buyer's Rights; Seller's Relief**

If the creditor fails to comply with the requirements set forth in §5.10, no action can be brought against any person who does not actually receive the money, property, or services that are the subject matter of the contract. CC §1799.95. The judge should have the creditor produce a copy of the notice to see if it meets the requirements.

Under CC §1799.95, a creditor who fails to comply with the statutory requirements is also prohibited from enforcing any security interest. However, this does not affect the rights of any bona fide purchaser for value of property sold pursuant to enforcement of a security interest if the purchase was made without notice of any facts constituting a violation of the statutory requirements.

Civil Code §1799.99 makes the same relief available as under CC §1799.95 when the transaction is subject to federal notice requirements.

## **C. Credit Transactions Involving Women (CC §§1812.30–1812.35)**

### **1. [§5.12] Statutory Coverage**

Civil Code §§1812.30–1812.35 are intended to ensure equality of treatment regardless of sex or marital status in all transactions in which money, property, labor, or services are obtained on a deferred basis, and to prevent discrimination against women in obtaining credit. See Note, *Credit for Women in California*, 22 UCLA L Rev 873 (1975).

For discussion of the provisions on the liability of marital property, see §5.2.

### **2. [§5.13] Requirements and Prohibitions**

All credit applications must clearly specify that a married person may apply for a separate account. CC §1812.30(j).

Credit reporting agencies must, upon request, file credit information on joint accounts separately for each person. CC §1812.30(e)–(f).

The denial of credit or the offering of credit to a woman or unmarried person on less favorable terms than to a man or a married person similarly situated because of sex or marital status is prohibited. CC §1812.30(a)–(b).

### **3. [§5.14] Relief Available**

A person damaged by a violation of CC §1812.30 is entitled to actual damages plus punitive damages not exceeding \$10,000. CC §1812.31. The court may also issue orders enjoining any violations or proposed violations. CC §1812.32. A person who brings an action for damages or an injunction is entitled to reasonable attorneys' fees and costs. CC §1812.34. An action for damages must be commenced within two years of the date of the violation. CC §1812.35. A person who intentionally violates an injunction issued under CC §1812.32 is liable for a civil penalty not exceeding \$2500 for each day of violation. CC §1812.33.

## **D. Song-Beverly Credit Card Act (CC §§1747–1748.95)**

### **1. [§5.15] Coverage of Act; Issuance of Credit Cards**

The Song-Beverly Credit Card Act (CC §§1747–1748.95) covers the rights and responsibilities respecting the issuance and use of credit cards. It is the Legislature's intent that provisions of the Act that are similar to provisions in the federal Truth-in-Lending Act, as amended (15 USC §§1601–1693r), essentially conform and be interpreted to conform to the Truth-in-Lending Act and any rule, regulation, or interpretation promulgated under it by the Board of Governors of the Federal Reserve System and its authorized employees. CC §1747.01. Any waiver of the provisions of the Act is contrary to public policy, and is void and unenforceable. CC §1747.04.

No credit card may be issued unless requested or applied for or in renewal or substitution of an existing card. CC §1747.05(a). A credit card issuer may not refuse to issue a card to any person based solely on the person's race, religion, sex, or national origin. CC §1747.80(a). See also §5.17.

A married woman, if otherwise qualified, may direct that a card be issued in either her maiden or married name. CC §1747.81(a).

Disclosure requirements are imposed by the Areias Credit Card Full Disclosure Act (CC §§1748.10–1748.14) and the Areias-Robbins Charge Card Full Disclosure Act (CC §§1748.20–1748.23).

### **2. [§5.16] Requirements**

A credit card issuer is required to

- Respond within the shorter of two complete billing cycles or 90 days to all inquiries from a cardholder. CC §1747.40.

- Correct all billing errors within the shorter of two complete billing cycles or 90 days of an inquiry. CC §1747.50.
- In response to a cardholders request, issue a statement of the amount of interest paid or finance charges without charge, within 30 days of the request, unless the card is issued in connection with a retail installment account. CC §1748.5; see §5.5.
- Disclose with any application form or preapproved written solicitation for an open-end credit card account, with specified exceptions, either (1) the periodic rate, any annual fee, any transaction fee, and any “free-ride period,” or (2) a disclosure that satisfies the initial disclosure statement requirements of Regulation Z. CC §1748.11. Any application form or preapproved written solicitation for a charge card must, with specified exceptions, disclose any annual fee, any cash advance fee, and that deferred payment is not permitted. CC §1748.22.
- Warn that making the minimum payment will increase both the interest to be paid and the time it takes to repay the balance. See CC §1748.13 for the wording and other requirements for this warning.
- Contact a credit card applicant to verify his or her address if the applicant’s address differs from that on the offer or solicitation; if the card issuer does not do this, the person to whom the card is issued is not liable for unauthorized use. CC §1747.06(a)–(b).
- Disclose to cardholders that use of preprinted checks constitutes a charge against the credit card account. CC §1748.9(a). Issuers must also disclose the percentage rate and other terms relating to the use of these checks. CC §1748.9(b)–(c).

Furthermore, issuers of secured credit cards (CC §1747.02(*l*)) are required to disclose in advertisements or solicitations that the credit instrument offered is a “secured credit card,” to identify the credit extended as being “secured,” and to describe the security by item or type. CC §1747.94(a).

On the request of a person who has obtained a police report under Pen C §530.6 regarding identity theft, a credit card issuer must provide to the person (or to a law enforcement officer specified by the person) copies of all application forms or application information containing the person’s name, address, or other identifying information pertaining to the application filed with the credit card issuer by an unauthorized person. CC §1748.95(a)(1).

Electronically printed receipts must contain only the credit card’s last five digits. CC §1747.09.

Any waiver of these provisions is contrary to public policy, and is void and unenforceable. CC §§1747.04, 1748.14, 1748.23.

### 3. [§5.17] Prohibited Acts

The Act prohibits retailers and others who accept credit cards for transaction of business from requesting or requiring personal identification information from credit cardholders (CC §1747.08) and prohibits retailers from imposing a surcharge in any sales, service, or lease transaction on a consumer who elects to use a credit card instead of paying by cash, check, or similar means (CC §1748.1).

The Act prohibits retailers from requiring credit card holders to provide personal identifying information as a condition to accepting credit card payment. CC §1747.08(b). This provision prohibits a retail store employee from making a preliminary request for personal identification before the customer has communicated the form of payment. *Florez v Linens 'N Things, Inc.* (2003) 108 CA4th 447, 453, 133 CR2d 465.

A retailer may, however, offer discounts for the purpose of inducing payment by cash instead of use of a credit card if the discount is offered to all prospective buyers. CC §1748.1. For the relief available for a violation of this provision, see §5.19.

The Act also prohibits credit card issuers from:

- Discrimination in the issuance of credit cards. CC §1747.80.
- Knowing issuance of false credit information. CC §1747.70(a).
- Issuance of unfavorable credit information because the holder claimed a billing error. CC §1747.70(b).
- Cancellation of or refusal to issue a credit card because the holder has obtained past relief for billing errors. CC §1747.70(c).
- Cancellation of a card without first giving the holder 30 days' written notice, with certain specified exceptions. CC §1747.85.
- Processing or obtaining payment of a credit card charge through a retailer's account with a financial institution if that retailer did not furnish or agree to furnish the goods and services that are the subject of the charge. CC §1748.7.

A two-tiered pricing system for gasoline (more per gallon if payment is by credit card, rather than with cash) is not an imposition of an illegal surcharge for using a credit card in violation of CC §1748.1, but is instead a valid inducement to paying in cash (see CC §1748.1(a)) based on the

actual cost difference to the gas station owner. *Thrifty Oil Co. v Superior Court* (2001) 91 CA4th 1070, 1076–1077, 111 CR2d 253.

#### **4. [§5.18] Unauthorized Use; Maximum Liability**

Under CC §1747.10, a cardholder is liable for unauthorized use of a credit card only if all of the following conditions are met:

- The credit card is one that the cardholder has requested or applied for and received; or has signed, used, or authorized another person to use; or was issued in renewal of, or in substitution for, an accepted credit card.
- The liability does not exceed \$50.
- The card issuer has given the cardholder adequate notice of the potential liability.
- The card issuer has provided the cardholder with a description of the means by which the issuer may be notified of the card's loss or theft.
- The unauthorized use occurs before the holder notifies the issuer that unauthorized use has occurred or may occur.
- The issuer has provided a method by which the user of a card can be identified as a person authorized to use the card.

When an issuer issues ten or more credit cards for use by the employees of an organization, the issuer and the organization may agree to liability for unauthorized use without regard to CC §1747.10. CC §1747.20. However, liability for unauthorized use may be imposed on an employee of the organization, by either the issuer or the organization, only in accordance with CC §1747.10. CC §1747.20.

#### **5. [§5.19] Relief Available**

Relief available under the Act includes:

- Treble damages, reasonable attorneys' fees and costs for willful violations of the requirements regarding the correction of billing errors (CC §1747.50(c)), the knowing issuance of untrue or unfavorable credit information (CC §1747.70(d)), and the cancellation of or refusal to renew a card because the holder has obtained relief for billing errors (CC §1747.70(d)).
- Actual damages, a \$250 penalty, and a court order for issuance of a card for willful discrimination in issuance. CC §1747.80(b).

- Prohibition against a card issuer who fails to correct a billing error within the shorter of two complete billing cycles or 90 days from collecting the amount of the incorrect billing, or any finance charges or other charges on the obligation that gave rise to the billing error. CC §1747.50(b).
- Extension of a cardholder's right to assert claims and defenses, except tort claims, against a retailer to apply to the card issuer, under certain circumstances. CC §1747.90.
- Treble damages, reasonable attorneys' fees, and costs for a retailer who willfully violates the provisions of the section by imposing a surcharge on a cardholder for using a credit card instead of cash and who fails to refund that amount to the cardholder within 30 days of a written demand by certified mail. CC §1748.1. A cause of action under this section may be brought in small claims court if within the jurisdictional limit, or in any other appropriate court.
- Civil penalty of \$250 for the first violation and \$1000 for each subsequent violation for requiring personal identification information from a cardholder, unless the defendant shows that the violation was not intentional and was the result of a bona fide error despite procedures adopted to avoid such errors. CC §1747.08(e).
- Damages, equitable relief, and attorneys' fees and costs in addition to other remedies provided by law for processing or obtaining payment of a credit card charge through a retailer's account with a financial institution if that retailer did not furnish or agree to furnish the goods and services that are the subject of the charge. CC §1748.7.

See *Young v Bank of America* (1983) 141 CA3d 108, 190 CR 122 (plaintiff properly received damages for pain and suffering which were trebled in trial court's discretion under CC §§1747.50(c), 1747.70(d) for willful violations of Act).

#### **E. [§5.20] Credit Services Act of 1984 (CC §§1789.10–1789.26)**

Civil Code §§1789.10–1789.26 regulate credit services organizations, defined by CC §1789.12 as those that provide advice, assistance, or other services for consideration to consumers to (1) improve a buyer's credit record, history, or rating, or (2) obtain a loan or other extension of credit for a buyer. The purposes of the Act are to provide prospective buyers of credit services with the information necessary to make an intelligent decision regarding the purchase of those services and to protect the public from unfair or deceptive advertising and business practices. CC §1789.11. To

this end, every contract, not just the initial contract, between a consumer and a credit services organization must be signed and contain certain disclosures. *Mitchell v American Fair Credit Ass'n* (2002) 99 CA4th 1345, 1353, 122 CR2d 193.

Generally, the Act prohibits certain business practices, requires certain information to be provided to the buyer before the execution of any contract, and requires every contract to contain certain disclosures, including the buyer's rights of cancellation. A buyer injured by a credit services organization's violation of the Act or breach of contract may bring an action for recovery of damages or for injunctive relief, or both. CC §1789.21(a). Judgment must be entered for actual damages, but not less than the amount paid by the buyer plus reasonable attorneys' fees and costs. The court may also award punitive damages in a proper case. Every credit services organization must register annually with the Department of Justice and comply with the bond requirements of CC §1789.18. CC §1789.25.

**F. [§5.21] Use of Credit Card Information as Prerequisite to Payment by Check in Retail Transactions**

No person accepting a check or other negotiable instrument as payment may require a credit card for identification or as prerequisite to acceptance of the negotiable instrument. CC §1725(a)(1). In addition, no person may record a credit card number when accepting a negotiable instrument or otherwise rely on the credit card account to cover the amount of the negotiable instrument. CC §1725(a)(2)–(4). Furthermore, a purchaser may be requested, but not required, to display a credit card to indicate creditworthiness so long as only the type of credit card, name of issuer, or expiration date of the card is recorded. CC §1725(c)(2). However, if a retailer does request the display of a credit card, the customer must be informed, either by posting notice or by requiring sales clerks to advise customers, that compliance with the request is not required by check writing. CC §1725(c)(2)(A)–(B).

Additionally, a retailer may:

- Require the production of reasonable forms of identification, other than a credit card, such as a driver's license. CC §1725(c)(1).
- Request or record a credit card number as a prerequisite to cashing a check which is being used solely to receive cash back. CC §1725(c)(3).
- Request a credit card number instead of a deposit to secure payment in case of default, loss, or damage. CC §1725(c)(4).
- Require, record, and verify a purchaser's name, address, and telephone number. CC §1725(c)(5).



- Request a credit card number on a check offered to make payment on that credit card account. CC §1725(c)(6).

A would-be purchaser who brings an action against a person who is in violation of CC §1725 may recover a civil penalty of \$250 for a first violation or \$1000 for second or subsequent violations. CC §1725(e). However, if the defendant shows by a preponderance of the evidence that the violation was both unintentional and resulted from an error made despite defendant's maintenance of procedures chosen for the purpose of avoiding such errors, no civil penalty may be assessed. CC §1725(e).

#### IV. FINANCIAL INSTITUTIONS

##### A. [§5.22] Small Loan Companies

Credit unions, *i.e.*, cooperative corporations organized to create a source of credit for their members (Fin C §§14002, 14002.5), are regulated by Fin C §§14000–16154. Industrial loan companies (*e.g.*, Morris Plan, Fireside Thrift, ITT Consumer Fin. Corp.), defined as premium finance agencies (Fin C §§18560, 18003), are regulated by Fin C §§18000–18642. Pawnbrokers, those engaged in the business of receiving goods in pledge as security for a loan (Fin C §21000), are regulated by Fin C §§21000–21209. Finance lenders, including personal property brokers (*e.g.*, Beneficial Finance), are those engaged in the business of lending money and taking as security a contract or obligation involving the forfeiture of rights in or to personal property or a lien on, assignment of, or power of attorney with respect to wages, salary, income, earnings, or commissions. Fin C §22009. As of July 1, 1995, they are regulated by Fin C §§22000–22780. See §§5.23–5.26.

Judges should proceed with special caution when dealing with lenders who use small claims court to recover outstanding loan amounts from borrowers. Some lenders unlawfully require that borrowers purchase “ancillary goods” (credit disability insurance, credit life insurance, and household or protective floater insurance) from them. Borrowers should be able to cancel the part of the loan contract pertaining to ancillary goods and obtain a refund of the costs of such goods as part of the small claims court judgment (see, *e.g.*, Stipulated Judgment in Alameda Superior Court, September, 1989, Case No. 6560380, *People v ITT Consumer Fin. Corp.*).

The California Finance Lenders Law, discussed in §§5.23–5.26, replaced the Personal Property Brokers Law, Consumer Finance Lenders Law, and Commercial Finance Lenders Law as of July 1, 1995.